

DATE: September 27, 2005

MEMORANDUM TO: Holly A. Kuga
Acting Assistant Secretary
for Import Administration

FROM: Barbara E. Tillman
Acting Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Sunset Review of the
Antidumping Duty Order on Certain In-Shell Pistachios from Iran;
Final Results

Summary

We have analyzed the substantive responses of both the domestic interested parties and respondent in the sunset review of the antidumping duty order covering certain in-shell pistachios from Iran. We recommend that you approve the positions we developed in the Discussion of the Issues section of this memorandum. Below is the complete list of the issues in this sunset review for which we received substantive responses:

1. Likelihood of continuation or recurrence of dumping
2. Magnitude of the margins likely to prevail

History of the Order

The Department of Commerce ("the Department") published its final affirmative determination of sales at less than fair value (LTFV) in the Federal Register with respect to imports of raw in-shell pistachios from Iran at the following rates:¹

Iran

Rafsanjan Pistacho Cooperative ("RPC")	241.14
All Other Manufacturers/Producers/ Exporters	241.14

In addition to the antidumping duty order, the following completed segments of the proceeding have taken place:

In-Shell Pistachios from Iran; Determination Not to Revoke Antidumping Duty Order,
56 FR 46765 (September 16, 1991).

¹ See Antidumping Duty Order; Certain In-Shell Pistachios from Iran, 51 FR 25922 (July 17, 1986).

In-Shell Pistachios from Iran; Determination Not to Revoke Antidumping Duty Order, 57 FR 37770 (August 20, 1992).

Notice of Final Results of Antidumping Duty New Shipper Review: Certain In-Shell Raw Pistachios from Iran, 68 FR 353 (January 3, 2003)

Final Results of Antidumping Duty Administrative Review: Certain In-Shell Raw Pistachios from Iran, 70 FR 7470 (February 14, 2005).²

In the new shipper review, the Department calculated a margin of 144.05 percent for Tehran Negah Nima Trading Company, Inc. (“Nima”), as supplied by Maghsoudi Farms. For the administrative review, the Department calculated a margin of 18.74 percent for Nima, as supplied by Razi Domghan Agricultural and Animal Husbandry Company.

Background

On March 1, 2005, the Department initiated a sunset review of the antidumping duty order on certain in-shell pistachios from Iran pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). See Initiation of Five-Year (“Sunset”) Reviews, 70 FR 9919 (March 1, 2005). The Department invited parties to comment. The Department received notices of intent to participate from two domestic interested parties, Cal-Pure Pistachios, Inc. (“Cal-Pure”) and California Pistachio Commission (“CPC”) together with the Western Pistachio Association (“WPA”) (CPC/WPA or “domestic interested parties”) within the deadline specified in 19 CFR 351.218(d)(1)(i). The domestic interested parties claimed interested party status under section 771(9)(C) of the Act as U.S. producers of a domestic like product. In addition, the Department received a submission from respondent Rafsanjan Pistachio Producers Cooperative (“RPPC”).

Cal-Pure filed its notice of intent to participate on March 16, 2005.³ CPC/WPA also filed a notice of intent to participate on March 16, 2005. On March 31, 2005, CPC/WPA filed their substantive response, and RPPC filed an inadequate response. On April 5, 2005, CPC/WPA filed a rebuttal brief under 19 CFR 351.218(d)(4). CPC/WPA contended that the response from RPPC was inadequate and did not provide the information required under 19 CFR 351.218(d)(3). In addition, CPC/WPA stated that RPPC made numerous allegations which are irrelevant to this proceeding.

On April 20, 2005, the Department notified the International Trade Commission (“ITC”) that it did not receive adequate responses from respondent interested parties with regard to this sunset review. On May 16, 2005, the Department published a notice extending the time to complete the sunset review by 90 days. See Internal Combustion Industrial Forklift Trucks from Japan, Porcelain-on-Steel Cooking Ware from China and Taiwan, Raw In-Shell Pistachios from Iran, Top-of-the-Stove Stainless Steel Cooking Ware from Korea and Taiwan; Extension of Time Limits for the Final Results of Sunset Reviews of Antidumping and Countervailing Duty Orders, 70 FR 25808.

² The Department rescinded the administrative reviews covering the 2000 - 2001, 2001 - 2002, and 2003 - 2004 periods of review. See Certain In-Shell Raw Pistachios from Iran: Notice of Rescission of Antidumping Duty Administrative Review, 67 FR 51193 (August 7, 2002), Certain In-Shell Raw Pistachios from Iran: Rescission of Antidumping Duty Administrative Review, 68 FR 16764 (April 7, 2003), and Notice of Rescission of Antidumping Duty Administrative Review: Certain In-Shell Raw Pistachios from Iran, 70 FR 17655 (April 7, 2005).

³ Although Cal-Pure filed its notice to participate, it did not file a response.

Discussion of the Issues

In accordance with section 751(c)(1) of the Act, the Department conducted this sunset review to determine whether revocation of this antidumping duty order would likely lead to the continuation or recurrence of dumping. Sections 752(c)(1)(A) and (B) of the Act provide that, in making this determination, the Department shall consider both the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the periods after the issuance of the antidumping duty order. In addition, section 752(c)(3) of the Act provides that the Department shall provide to the ITC the magnitude of the margins of dumping likely to prevail if the orders were revoked. Below we address the comments of the interested parties.

1. Likelihood of Continuation or Recurrence of Dumping

Interested Party Comments

Domestic interested parties believe that revocation of this antidumping duty order would likely lead to a continuation or recurrence of dumping by the Iranian manufacturers, producers, and exporters of the subject merchandise due to continued or resumed dumping. See Raw In-Shell Pistachios from Iran: Substantive Response to Notice of Initiation from California Pistachio Commission (“CPC”) and Western Pistachio Association (“WPA”) (collectively, “Domestic Interested Parties”), dated March 31, 2005 (“Domestic Substantive Response”). The domestic interested parties contend that the dumping margins remain at above de minimis levels for all manufacturers, producers, and exporters of the subject merchandise. See Domestic Substantive Response at 8 - 9.

Domestic interested parties assert that import volumes plummeted following the initiation of the investigation and the Department’s preliminary affirmative determination in April 1986. Specifically, domestic interested parties state that imports fell from a monthly average of 3.695 million pounds in the six months prior to the preliminary determination, to an average of 104,162 pounds between the preliminary determination and the imposition of an embargo against Iranian goods in September of 1987. See Respondent Substantive Response at 11 and Exhibits 3 and 5. To provide evidence for its claim of decreasing import volumes, domestic interested parties provided import volumes of the subject merchandise under the Tariff Schedule of the United States, Annotated, or TSUSA, subheading 145.2600 for the years 1986 and 1987. In addition, since the removal of the embargo on Iranian pistachios in March 2000, domestic interested parties asserted that import levels have averaged 42,954 pounds per year through 2004.⁴ Id. Domestic interested parties provided import volumes of subject merchandise under the Harmonized Tariff Schedule subheading 0802.50.2000 for the period 1989 through 2004. See Domestic Substantive Response at exhibit 3 (based on USITC Trade DataWeb).

As to dumping margins, domestic interested parties note that in both the new shipper review and administrative review the Department found existence of above de minimis margins.

⁴ In calculating the average import level from 2001 through 2004, domestic interested parties mistakenly used customs value data from USITC Trade DataWeb rather than quantity data. Based on quantity data, the average import level from 2001 through 2004 is 7,124 pounds. That is, zero kilograms were imported in 2001, 12,500 kilograms were imported in 2002, 426 kilograms were imported in 2003, and zero kilograms were imported in 2004, resulting in a total of 12,926 kilograms from 2001 through 2004. Dividing this total by four results in an annual average from 2001 through 2004 of 3231.5 kilograms, which when using a conversion factor of 2.2046 pounds per kilogram, converts to an annual average of 7,124 pounds.

Domestic interested parties contend that the finding of above de minimis margins is a sufficient basis for the Department to conclude that Iranian producers are likely to continue to engage in dumping in the absence of an antidumping order. See Domestic Substantive Response at 9.

Respondent comments do not contain required information under 19 CFR 351.218(d)(3), and do not address issues under section 751(d)(2) of the Act. As previously mentioned, the Department found respondent's comments to be inadequate. However, a brief review of the comments is in order. The comments state that the current order is unfair, that it damages the emotional state of Iranian farmers and citizens, that Iran imports some grain and might import more grain from the United States were this order to be rescinded, and that the U.S. pistachio industry has consolidated and is no longer in need of protection. See Respondent Comments at 4 - 5. Furthermore, respondent provides a number of tables purporting to show U.S. pistachio production increases, crop value increases, domestic shipments, and exports, since the imposition of the order. Id. at 6 - 9. The source of the information is stated as the California Pistachio Commission.

Department's Position

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act (URAA), specifically the SAA, H.R. Doc. No. 103-316, vol. 1 (1994), the House Report, H. Rep. No. 103-826, pt. 1 (1994) (House Report), and the Senate Report, S. Rep. No. 103-412 (1994) (Senate Report), the Department normally determines that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above de minimis after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of an order and import volumes for the subject merchandise declined significantly.

Deposit rates above de minimis remain in effect for exports of in-shell pistachios from Iran. As previously mentioned, the Department has conducted two reviews under this proceeding that have found dumping at rates above de minimis.

The Department also analyzed and considered the volume of imports of the subject merchandise for a year before the issuance of the orders through 2004, the last full year of available statistics. See Memorandum to The File from John Drury, Case Analyst, through Abdelali Elouaradia, Program Manager, regarding the Import Volumes for the Expedited Sunset Review of the Antidumping Duty Order on Certain In-Shell Pistachios from Iran; Final Results, dated September 27, 2005 ("Import Volumes Memorandum"). We note that import volumes for the subheading 0802.50.20.00 of the Harmonized Tariff Schedule of the United States, which includes both raw and roasted in-shell pistachios, continue to be well below pre-initiation levels.

Using statistics provided by the ITC DataWeb and the ITC (see Import Volumes Memorandum, dated September 27, 2005), the Department finds that imports of in-shell pistachios from Iran have dramatically decreased from the pre-initiation level of 9.66 million kilograms in 1984 to 12,500 kilograms in 2002, 426 kilograms in 2003, and zero in 2004. Given that dumping continues at above de minimis levels, and imports are below the pre-initiation level, the Department determines that dumping is likely to continue or recur if the order were revoked.

Respondent's comments do not address any portion of the statute or regulations concerning sunset reviews. Respondent has simply made allegations without certification or demonstration as to how these "other factors" might be applicable to the Department's analysis

under the statute. None of respondent's allegations are relevant to the issue of whether there is likelihood of continuation or recurrence of dumping. Therefore, we are disregarding these comments in our analysis.

In sum, on the basis of information provided by domestic interested parties, information on the record, and the lack of adequate information provided by the respondent parties, we find that it is likely that if the antidumping duty order for in-shell pistachios from Iran were revoked, dumping would continue or recur.

2. Magnitude of the Margin Likely to Prevail

Interested Party Comments

Domestic interested parties assert that the Policy Bulletin (quoting the SAA at 890) states that the Department normally is to select a margin "from the investigation, because that is the only calculated rate that reflects the behavior of exporters. . . without the discipline of an order or suspension agreement in place." Domestic interested parties further assert that the use of recently calculated dumping margins is not applicable in this case because 1) dumping margins did not increase after the issuance of the order, and 2) dumping margins have not declined over the life of the order while imports remained steady or increased. See Policy Bulletin (quoting SAA at 889-890). Therefore, domestic interested parties conclude that the Department should report the margins from the investigation to the ITC as the likely margins if the antidumping duty order were revoked.

Department's Position

Section 752(c)(3) of the Act provides that the Department will report to the ITC the magnitude of the margin of dumping that is likely to prevail if the order were revoked. The Department normally will select a margin from the final determination of the investigation because that is the only calculated rate that reflects the behavior of exporters without the discipline of an order. See SAA at 890, and the House Report at 64. For companies not investigated specifically or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "all others" rate from the investigation. The Department's preference for selecting a margin from the investigation is based on the fact that it is the only calculated rate that reflects the behavior of manufacturers, producers, and exporters without the discipline of an order or suspension agreement in place. Under certain circumstances, however, the Department may select a more recently calculated margin to report to the ITC.

The Department must determine the appropriate rates to report to the ITC for in-shell pistachios from Iran. In the final determination of the investigation, the Department found dumping margins of 241.14 percent for RPC and all other manufacturers/producers/exporters. The Department finds that it is appropriate to provide the ITC with the rates from the investigation because these are the only calculated rates that reflect the behavior of manufacturers, producers, and exporters without the discipline of an order in place. There are no circumstances, such as declining dumping margins combined with increased import volumes, to warrant use of more recently calculated margins. Thus, the Department will report to the ITC the same margins from the investigation, as listed in the Final Results of Review section of this memorandum.

Final Results of Review

As a result of this review, the Department determines that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

----- Manufacturers/Exporters/Producers -----	Weighted-Average Margin (percent)
RPPC	241.14
Nima/Maghsoudi	241.14
Nima/Razi	241.14
All Other Iranian Manufacturers and Exporters	241.14

Recommendation

Based on our analysis of the substantive responses received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of this sunset review in the Federal Register.

AGREE _____

DISAGREE _____

Holly A. Kuga
Acting Assistant Secretary
for Import Administration

Date